IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21/03/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

W.P. No.14996 of 2002

Dr. S. Paranjothi ..... Petitioner

-Vs-

1. Dr. D. Balasubramaniam

2. Union Public Service Commission
rep. by its Secretary,
Shajahan Road
New Delhi

3. The Secretary
Health & Welfare Department (Health)
Government of Pondichery
Pondichery

4. The Hon□ble Central Administrative
Tribunal, Madras Bench, rep. by
its Registrar, Chennai 600 104 ..... Respondents

Petition under Art.226 of the Constitution of India
praying for a Writ of Certiorari as stated in the petition

For Petitioner :: Mr. G. Rajagopalan
Senior Counsel for
Mr. V. Babu
For Respondents :: Mr. Vijaynarayan for R1
Mr. T. Arunan, A.C.G.S.C.
for R2
Mr. A.P. Suryaprakasam
for R3
:ORDER

V.S. SIRPURKAR, J.

Petitioner herein challenges the judgment of the Central

Administrative Tribunal (Tribunal for short) whereby, the Tribunal allowed the original application filed by the first respondent. In that application, the selection of the petitioner for the post of Specialist Grade-II Senior Scale Super Specialist in Neurology has been set aside.

2. The Tribunal has taken a view that the petitioner did not have the necessary qualification for the said post in the sense, that he did not have the necessary number of years of experience predominantly for the reason, in the Government Hospital of Pondichery, where the petitioner was in service, the Department of Neurology was opened only in November, 1997 and the petitioners experience in other capacities could not be taken into consideration for this post. Following facts will highlight the controversy:

3. Petitioner passed his M.B.B.S. Degree somewhere in the year 197 6 and the degree of M.D. in the year 1987. He passed his degree of Doctor of Medicine in Neurology in the year 1992 from the Stanley Medical College. All through, the petitioner had been serving in the post of Assistant Civil Surgeon till 1989 and thereafter he was promoted as Junior Specialist in Medicine. He was thereafter designated as Specialist Grade II (Senior Scale) and was further promoted as Specialist Grade II in Medicine.

4. An advertisement appeared for the post of Specialist Grade II (Senior Scale) Super Specialist in Neurology in the year 1999. Besides the necessary educational qualification, the advertisement mentioned five years experience in the concerned Speciality, i.e. Neurology after obtaining the first Post Graduate Degree. Petitioner accordingly applied for the same as an in-service candidate on the assumption that since he had passed his Doctor of Medicine in Neurology in the year 1992, he had the necessary experience in that speciality.

5. A letter dated 30-11-1999 was sent to him by the Union Public Service Commission (in short UPSC) whereby the petitioner was directed to produce the documentary proof showing that he had the five years of experience in the concerned speciality. Petitioner, accordingly, sent a letter dated 15-2-1999 along with the certificates suggesting that he was working in the Neurology Department and had the five years experience in that speciality. Accordingly, the petitioner was called for the interview and was selected by the order dated 14-12-200 0. All this exercise was done by the UPSC.

6. As the first respondent Dr. D. Balasubramaniam had filed the original application (O.A. No.159 of 2000) before the Tribunal seeking the consideration of his representation to the UPSC, UPSC was directed to consider that representation. In his representation, he sought the appointment himself. However, that representation is said to have been rejected on the ground of his lack of experience.

7. The first respondent, therefore, filed the present original application before the Tribunal in which, he prayed for the setting aside of the selection order No.12021/11/98(6)H1, dated 14-12-2000. He also prayed therein for the setting aside of the order No.F.25/14/2001 -R-1, dated

21-6-2001 and sought for a direction to the UPSC to call himself for the interview for selection to the said post and to appoint him in that post. The said application seems to have been allowed by the Tribunal vide its judgment dated 1-2-2002, which necessitated the present writ petition.

8. Learned counsel for the petitioner contended that the order of the Tribunal was patently incorrect inasmuch as the Tribunal had committed jurisdictional error in holding that the certificates produced by the petitioner before the UPSC were not true. Learned counsel points out that there were two certificates submitted by the petitioner when the UPSC sought his explanation regarding his experience. Those certificates included a certificate dated 10-12-1999 issued by the Medical Superintendent, Government General Hospital of Pondichery wherein the petitioner's service in various capacities was described and it was certified that after the completion of Doctor of Medicine in Neurology, the petitioner had been treating the neurological patients wherever he worked in this administration. It was also certified that the petitioner was working in the Department of Neurology and he served as the Head of the Department of Neurology with effect from 4-11 -1997 in the Government Hospital, Pondichery and was looking after the out-door patients and in-door patients and was also supervising the medical officers posted in the Department of Neurology. There was another certificate issued and submitted by the petitioner to UPSC, which was dated 20-4-1999, wherein, again, the petitioner's service in various capacities was described with reference to the dates and it was also certified that he was working in the Department of Neurology.

9. Learned counsel pointed out that there was no reason for the Medical Superintendent of the Government General Hospital to give any false certificate and it was obvious that after passing the degree of D.M. in Neurology, the petitioner was all through working and treating the neurological patients and, therefore, he was having the five years' experience in that speciality. Learned counsel pointed out further that in fact the original application could not have been filed by the first respondent herein for the simple reason that he did not have even the locus standi to file the same as he was himself not qualified to compete for the said post.

10. It is on this backdrop that we have to see as to whether the Tribunal was right in holding that the petitioner did not have the experience of five years in the speciality of Neurology.

11. It is an admitted position that the petitioner worked in the following capacities: 1. Assistant Surgeon :: 6-2-1978 to 2-4-1989
2. Junior Specialist :: 3-4-1989 to 14-2-1996
(Medicine)

3. Specialist Grade II :: 15-2-1996 to 14-2-1998
(Junior Scale)

4. Specialist Grade I :: 15-2-1998 to till date i.e.
(10-12-1999)

There is no dispute, at least at the stage of Tribunal, that the petitioner has the necessary educational qualifications inasmuch as he had passed the degree of Doctor of Medicine in Neurology from Stanley Medical College while he was in-service candidate. It is also an admitted position that while the petitioner was doing his course of Doctor of Medicine in the Stanley Medical College, he also taught for about two years. It is further an admitted position that he was serving in Stanley Medical College, Chennai from 4-10-1989 to 11-9-1991.

12. The stand taken before the Tribunal by the UPSC, which is clear from the order dated 21-6-2001 (a communication from UPSC to the first respondent herein), was that the petitioner had the necessary experience of five years in the concerned speciality which was obviously on the basis of the certificates issued by the Medical Superintendent of Government Hospital, Pondichery, to which we have already made a reference.

13. The Tribunal seems to have proceeded on the basis that the petitioner had obtained the degree in Doctor of Medicine in Neurology only in March, 1992 and as such he could have had the experience in that speciality only from the date a certificate was issued to him dated 25-2-1992 in that behalf. The Tribunal further noted the fact and relied upon the same that between 15-2-1996 and 14-2-1998, the petitioner was working at Community Health Centre, Mannadipet, Pondichery and that in the said Health Centre, there was no Department of Neurology. The Tribunal further noted that between 2-9-1997 and 13-11-1997 the petitioner was working in the Medicine Department of Government Hospital, Pondichery and it was only after the Department of Neurology was opened on 14-11-1997 that he continued to work in that department. The Tribunal, therefore, deduced that he had only three years, four months and twenty-three days of experience in the speciality of Neurology. The Tribunal had called for the records and found from the same that the petitioner was working in the Department of Neurology only from 14-11-1997 to 29-4-1999.

14. In short, the Tribunal refused to hold that the petitioner had the necessary experience of five years in the speciality of Neurology while he was working in the Community Health Centre for a period of two years. The Tribunal, however, granted him the benefit of the period when he was doing his course, i.e. between 4-10-1989 and 11-9-19 91, i.e. one year, eleven months and eight days but, refused to give any benefit for the later periods when the petitioner was working as Junior Specialist in Medicine in the Community Health Centre, Palloor, Mahe from 12-9-1991 to 18-8-1992. The Tribunal also found further that from 27-3-1996, the petitioner was working in the Community Health Centre, Mannadipet, Pondichery for two years. It is this service of the petitioner at Palloor and Mannadipet which, according to the Tribunal, cannot be considered in favour of the petitioner because at that time he was working only at the places where there was no specialised Neurology Department. Even the experience of the petitioner for the period between 3-9-1997 and 13-11-1997, i.e. two months and eleven days has been refused by the Tribunal when the petitioner was working in the Department of Medicine.

15. In short, the Tribunal has taken the view that for getting the experience in a particular speciality, there must be a separate Department of that stream and unless such a department is there, the experience of the person cannot be counted. In our opinion, the Tribunal is not correct in taking such a narrow view of the matter.

16. In the first place, on record there were two certificates and more particularly, certificate dated 10-12-1999, which was issued by the Medical Superintendent, Government Hospital, Pondichery wherein, it was specifically pointed out that after his completion of the degree in Doctor of Medicine in Neurology, the petitioner was treating the patients with neuro-problems wherever he worked in the administration. During the course of arguments, it was pointed out by the learned counsel for the petitioner that the Community Health Centre at Mannadipet, where the petitioner was admittedly working for two years, was part and parcel of the Pondichery city and, therefore, it was obvious that if the Medical Superintendent of Government General Hospital, Pondichery had specifically certified that right from 1992, when the petitioner acquired the necessary qualification in the speciality of Neurology, the petitioner treated the patients with neuroproblems, then, there was no reason to disbelieve the bona fide statement made in the certificate. Learned counsel very rightly points out that it was for the UPSC to consider as to whether the petitioner had the necessary experience and it had taken the unique stand that the petitioner did ultimately possess the five years experience.

17. It is obvious that the Tribunal has refused to give advantage to the petitioner of the fact that the petitioner was a full-fledged Neurologist right from 1992 and was treating the patients with neuro-problems day in and day out. It is for us to hold that there were no neuro-patients in Pondichery at all or that there were no neuro-patients in Mannadipet where the petitioner was working though as a Doctor in Medicine. It cannot be forgotten that the petitioner was having the degree of Doctor of Medicine in General Medicine as also in Neurology. Merely because, the petitioner was working in the Department of Medicine, it cannot be said that he had no opportunity whatsoever to treat the neuro-patients. If the Medical Superintendent of Government Hospital, Pondichery has given a certificate, it is obvious that the same has been given only after ascertaining that there were neurological patients and those patients were actually treated by the petitioner. We do not think how the Tribunal expects that in order to have an experience in that speciality, the person must be an in-service candidate firstly and further he should be working only in the Department of Neurology. In this country, all the hospitals cannot boast of having separate Departments for different specialities. Where a responsible officer like a Medical Superintendent of a Government General Hospital issued a certificate that wherever the petitioner was serving he used to treat the patients with neuro-problems after he became qualified to do so, we do not think how it will not form an experience in the speciality of Neurology. This concept that there should be a separate Department of Neurology in the hospital and the petitioners working there alone would amount to a proper experience, in our opinion, is an incorrect reasoning. If the view taken by the Tribunal is upheld then, it would mean that a person who was doing a private practice and all through treating the

patients with neuro-problems would not be able to apply for the post.

18. Seeing the advertisement closely, there is nothing to suggest that such experience of five years in that speciality should have gained in a department attached to a Government hospital alone and not by way of private practice. If a Doctor is a private practitioner and has been treating the patients with neurological problems, he would be perfectly justified in applying for the said post and it cannot be said that such person does not have the necessary experience of five years in that speciality. The words "five years' experience in the speciality" only denote that the persons who have been treating the neuro-patients after obtaining the necessary qualification and thereby using his knowledge of that speciality. It is nobody's case that there were no neuro-patients at Mannadipet at all and, therefore, if the Medical Superintendent of Government Hospital, Pondichery says specifically that it was the petitioner who was treating all the neuropatients wherever he was during his service after 1992 then, we have no reason to hold that the petitioner did not have the experience of five years in the speciality of Neurology. In fact, the petitioner having passed his examination in the speciality of Neurology in the year 1992 must have started treating the patients with neuro problems wherever they came while he was working in different capacities. We, therefore, do not agree with the Tribunal when the Tribunal takes an extreme narrow view of the clause stipulating five years' experience in the concerned speciality. This is all the more because of the certificate issued by a responsible officer like Medical Superintendent of Government Hospital, Pondichery.

19. Learned counsel appearing for the third respondent also supported this view and pointed out that the petitioner was all through working and treating the patients with neuro-problems wherever he was working, after his passing of the Doctor of Medicine in Neurology. If the petitioner's experience of two years at the Community Health Centre at Mannadipet is taken into consideration and its benefit is given to the petitioner, the petitioner would clearly have more than five years' of experience in the speciality of Neurology.

20. As if all this is not sufficient, at the stage of writ petition, learned counsel for the petitioner pointed out that the petitioner was also working in East Coast Hospital Limited and he was the only consultant in Neurology since 1992 till 14-12-1999, which is the date of the certificate. The certificate specifically says that he was fully in charge of all neurological cases and worked together with neuro-surgeons and that he was treating all the stroke cases admitted to the hospital. This certificate does not seem to have been disputed by the first respondent, at least at this stage. We are, therefore, of the opinion that the Tribunal was not right in allowing the original application and setting aside the selection of the petitioner on the ground that he did not have the necessary experience of five years in the concerned speciality, i.e. Neurology.

21. By the end of arguments, Mr. Vijay Narayan, by way of almost a desperate plea, tried to suggest that the petitioner had completed his course in M.D.(General Medicines) from Thanjavur Medical College, which is

affiliated to Bharathidasan University. He pointed out that the said qualification of M.D. (General Medicine) was not recognised by the Medical Council of India, New Delhi. Learned counsel, therefore, suggests that the petitioner's M.B.B.S. degree as well as the M.D. degree was from the unrecognised college and, therefore, would be of no consequence and his educational qualification itself was wanting.

22. This question was never raised before the Tribunal and it seems to have been brought about only by way of a desperate argument. That apart, the petitioner's degree of M.D. (General Medicine), which he said to have obtained from Thanjavur Medical College, Bharathidasan University, is not the issue here. It is an admitted position that the petitioner did his Doctor of Medicine in Neurology, with which we are concerned in this petition, from University of Madras. If that is so, there would be no question of allowing the first respondent to raise this issue for the first time to be examined by the High Court at the writ petition stage. We do not, therefore, propose to examine that issue. The first respondent is free to raise that issue before the appropriate forum, if he is so advised.

23. The writ petition, therefore, must succeed. It is accordingly allowed. The judgment of the Tribunal is set aside and the original application filed by the first respondent herein is ordered to be dismissed. No costs. Connected W.P.M.P. No.20151 of 2002 and W.V.M.P. No.808 of 2002 are closed.

Index:Yes
Website:Yes

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To:

1. Secretary
Union Public Service Commission
Shajahan Road
New Delhi

3. The Secretary
Health & Welfare Department (Health)
Government of Pondichery
Pondichery

4. The Registrar
Central Administrative Tribunal
Madras Bench
Chennai 600 104